

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A05-67195-PWB
	:	
MARY KATHRYN TURNER and	:	
LONNIE DANIEL TURNER,	:	
	:	
Debtors.	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE
	:	
MARY KATHRYN TURNER and,	:	
LONNIE DANIEL TURNER	:	
	:	
Movant	:	CONTESTED MATTER
	:	
v.	:	
	:	
UNIFUND CCR PARTNERS ASSIGNEE	:	
OF PROVIDIAN NATIONAL BANK,	:	
	:	
Respondent.	:	

**ORDER DENYING MOTION TO AVOID LIEN AND AMENDED MOTION TO
AVOID LIEN WITHOUT PREJUDICE**

Before the Court is the Debtors' motion and amended motion to avoid the lien of Unifund CCR Partners Assignee of Providian National Bank ("Unifund"), pursuant to 11 U.S.C. § 522(f). For the reasons stated herein, Debtors' motion is denied without prejudice.

Debtor's initial motion filed May 5, 2005, served upon "Frederick J. Hanna, Esq., 1655 Enterprise Way, Marietta, GA 30067" and "Registered Agent for Providian, CT Corporation System, 818 West Seventh St., Los Angeles, CA 90017," set the motion for hearing on May 24, 2005. On the same day, Debtors filed an amended notice of hearing rescheduling the motion for hearing on June 21, 2005, but did not serve the amended notice of hearing on any party. To complicate matters, because the Debtors' motion did not include a "Notice to Respond" as required

by BLR 6008-1(a), NDGa, the Clerk issued a deficiency notice. In response, Debtors filed an amended motion to avoid Unifund's lien that included the required notice to respond, but did not serve the amended motion and notice on any party.

Because Debtors failed to serve their amended motion to avoid lien and notice to respond on Unifund, it is necessary to deny the motion. In addition, the Court makes the following observations. First, it is unnecessary to schedule a motion to avoid a lien for hearing. BLR 6008-2 requires a party to file a response to a motion to avoid a lien within 20 days of the date of service and provides that "if no response is timely filed and served, the motion will be deemed unopposed and the Bankruptcy Court shall enter an order granting the relief sought." If a response is filed, only then is it necessary to schedule a hearing. Second, it is unclear whether Unifund has received notice as required by FED. R. BANKR. P. 7004. Debtors served the original motion on a registered agent for Providian National Bank and Frederick J. Hanna, Esq. If CCR Unifund Partners is the assignee and lienholder, service upon Providian National Bank is not sufficient to give notice to Unifund. Further, it is unclear what relationship Hanna bears to Unifund since he has not made any appearance in this case and there is nothing in the record to indicate he is authorized to accept service of process on behalf of Unifund. *See Beneficial California, Inc. v. Villar (In re Villar)*, 317 B.R. 88 (9th Cir. B.A.P. 2004) (attorney's representation of the creditor in a state court action is not a sufficient basis for presumption that attorney was also authorized to accept service for a motion to avoid a judicial lien). Thus, because the Debtors have failed to give notice of the motion and amended motion as required by the Bankruptcy Rules, it is

ORDERED that Debtors' motion and amended motion to avoid the lien of Unifund CCR Partners Assignee of Providian National Bank is **DENIED** without prejudice.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this _____ day of October, 2005.

PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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